

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

- - - - In the Matter of the Application of - -)
PUBLIC UTILITIES COMMISSION)
Instituting a Proceeding to)
Investigate the Implementation)
Of Feed-In Tariffs)
_____)

PUC Docket 2008-0273

PUBLIC UTILITIES
COMMISSION

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FILED

LIFE OF THE LAND'S
ANSWERS TO COMMISSION'S THRESHHOLD QUESTIONS
&
CERTIFICATE OF SERVICE

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Aloha Commissioners,

Threshold Issues (Legal)

1. If the price associated with a feed-in tariff exceeds the utility's avoided cost, then by definition the utility's customers will incur higher costs than they would in the absence of the feed-in tariff. Please comment on the legal implications of this result. For example:

- a) Is this result permissible under current Hawaii statutes?**
- b) Does HRS § 269-27.2 create a ceiling on the feed-in tariff price?**
- c) If so, how do the signatories to the Energy Agreement (or other parties to this proceeding) propose to demonstrate that each feed-in tariff price does not violate the statute?**

In this docket, all parties agree that the Commission should oppose the building of new fossil fuel power plants exceeding 2 MW in size. This is because all parties recognize that there are real costs (economic, political, social, security, climate change) associated with remaining dependent upon fossil fuels. These costs can be included in avoided cost calculations providing that all parties accept a Commission fee imposed upon the use of fossil fuel, for example, an externality fee, or a greenhouse gas fee or a per oil barrel fee. This could be as simple as updating the Commission's March 11, 2008 Decision and Order No. 24086 in Docket No. 7310 re Avoided Costs. In that docket, the Commission stated that avoided cost could include an externality payment so long as it is a "real" cost. The October Hawai'i-HECO Agreement implies that this is true.

Decision and Order No. 24086:

Here, the issue facing the commission is whether environmental externalities should be taken into account by the HECO Companies in determining their respective avoided energy costs. In effect, whether the definition of avoided energy costs should include environmental externalities. (page 59)

FERC instructs that: (1) a state, in setting avoided cost rates, may only account for costs that will actually be incurred by the electric utility; and (2) environmental costs, if they are real costs that will be incurred by the electric utility, may be accounted for in the determination of avoided cost rates. Conversely, a state may not set avoided cost rates by imposing environmental adders that are not based on real costs that will be incurred by the electric utility. (page 60)

The commission finds that, based on the docket record herein and consistent with the guidance provided by

FERC, the commission may not set avoided cost rates by imposing environmental adders that are not based on real costs that will be incurred by the electric utility.
(page 62)

HRS 269-27.2(c): "[A] public utility shall not be more than one hundred per cent of the cost avoided by the utility when the utility purchases the electrical energy rather than producing the electrical energy. The commission's determination of the just and reasonable rate shall be accomplished by establishing a methodology that removes or significantly reduces any linkage between the price of fossil fuels and the rate for the nonfossil fuel generated electricity to potentially enable utility customers to share in the benefits of fuel cost savings resulting from the use of nonfossil fuel generated electricity."

HRS 269-91. "'Cost-effective' means the ability to produce or purchase electric energy or firm capacity, or both, from renewable energy resources at or below avoided costs consistent with the methodology set by the public utilities commission in accordance with section 269-27.2."

Establishing a just and reasonable externality fee associated with the use of fossil fuel -- and that is acceptable to all parties -- will result in a higher avoided cost and side-step the issue of the possibility that renewable energy may cost more. The issue that renewables cost more is not our belief, but this mechanism is a way of dealing with HRS and PURPA.

2. As with any administrative agency decision, a Commission decision approving a feed-in tariff must be supported with substantial evidence.

a) Focusing on the price term, what evidence is legally necessary?

Consider these options, among others:

i) evidence of actual costs to develop similar projects in Hawaii

ii) generic (i.e., non-Hawaii) evidence of costs associated with each particular technology

iii) evidence that the tariff price results in costs equal to or below the utility's avoided cost

b) By what process do the signatories (and other parties to this proceeding) propose to gather this evidence and present it the Commission, under the procedural schedule proposed by the signatories?

While we expect the Commission to base its decision on the costs to develop alternatives, we believe that the payments should be sufficient to encourage rapid transition away from fossil fuels. Thus the guiding determination should not be limited to exact costs to the developer, but what payments are sufficient to bring those projects into existence that will further the State's desire to move away from fossil fuel. The price paid should vary dependent upon the availability of applications filed and applications approved.

3. Assume the Commission does create feed-in tariffs, which entitle the seller to sell to the utility at the tariff price.

- a) If the tariff price exceeds the utility's avoided cost, is there a violation of PURPA, provided the seller is relying on a state law right to sell rather than a PURPA right to sell?
- b) If the tariff price exceeds the utility's avoided cost (as calculated prior to the existence of the tariff), could a seller assert a PURPA right to a sale at the tariff price, on the grounds that the utility now has a new "avoided cost" equal to cost it would have incurred under the state mandated feed-in tariff?
- c) If the price associated with a feed-in tariff is less than the utility's avoided cost, what benefit does the tariff offer the developer that is not already available under PURPA?
- d) Please offer any other comments concerning the legal and practical relationship between the feed-in tariff and existing PURPA rights and obligations.

It is our understanding that the utility in some cases has paid above avoided costs, such as to H-POWER. As per HDA's comments, a tariff agreed to by the Seller and Buyer and approved by the Commission may exceed avoided cost, PURPA trumps when state law when the utility is required against its will to pay above avoided cost.

4. Feed-in tariffs, if approved by the Commission, would join an array of legislative and regulatory initiatives to boost production of renewables in Hawaii. Those initiatives include PURPA, the renewable portfolio standard, net metering and various distributed generation actions. Are there overlaps, redundancies, gaps among these multiple initiatives? What is the independent purpose of each of these, in relation to the others?

This question is extremely complex and could take hundreds of pages to answer. In addition, the array of initiatives should also include wheeling and decoupling.

On a somewhat simplistic level, since the goal of the State is to maximize renewable energy penetration, there should be a variety of programs and approaches available. We should be seeking new initiatives rather than getting rid of older initiatives. We are at the start of the Feed in Tariff docket. There are many issues: types of renewables, size, location, etc. that have not been decided upon, therefore any discussion on using Feed in Tariffs to displace existing programs is way premature. In addition, the public thought that Feed in Tariffs may replace existing programs will directly impact the ability of independent power producers to offer these programs to customers during the Feed in Tariff discussions. Therefore the Commission should rule that Feed in Tariffs will add but not replace existing programs.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy by hand delivery of the foregoing Reply to Commission Questions by Life of the Land, in PUC Docket Number 2008-0273, upon the following parties. I have hand delivered the original and 8 copies to the PUC, and sent electronic copies to the emails below representing the parties listed further below.

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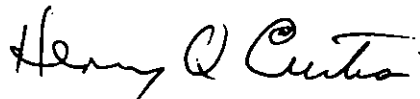
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DATED: JANUARY 12, 2008

A handwritten signature in black ink, appearing to read "Henry Q. Curtis". The signature is fluid and cursive, with a large initial "H" and "C".

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